

LOUIS STOKES CLEVELAND
 VA MEDICAL CENTER
 10701 East Blvd
 Cleveland, Ohio 44106

MEDICAL CENTER POLICY 003-003

March 1, 2016

PENGAD 800-631-6989	PLAINTIFF'S EXHIBIT NO. FOR IDENTIFICATION
88	DATE: RPTR:

POLICY ON THE PREVENTION OF SEXUAL HARASSMENT

1. PURPOSE. The purpose of this policy is to advise all employees of their responsibility regarding the prevention of sexual harassment in the workplace, to define and establish procedures for monitoring and evaluation, and to enforce the laws relative to sexual harassment.

2. POLICY. It is the policy of the Louis Stokes Cleveland Veterans Affairs Medical Center (LSCVAMC) that sexual harassment is unacceptable conduct in the workplace and will not be tolerated. This policy applies to all employees and covers all employees outside the work place while conducting Government business and to non-employees while conducting business in the VA work place. This facility aims to provide a work environment free from sexual harassment, and in cases that so warrant, corrective action will be taken by appropriate management officials. Sexual Harassment is a form of employee misconduct that seriously undermines the integrity of the employment relationship.

3. DEFINITION

a. Sexual harassment is deliberate or repeated unwelcome verbal comments, gestures, physical contact of a sexual nature, sexual advances, requests for sexual favors, and other verbal conduct of a sexual nature when:

1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment;

2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

b. Hostile-environment harassment is any lewd sexual conduct including, but not limited to: pictures, words, jokes, questions, remarks, teasing, and/or touching that unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

c. It is important to note that unless the conduct is quite severe, a single incident or remark does not generally create a hostile environment. The conduct must substantially affect the work environment of a "reasonable" person to be considered harassment. The exception is that a single incident of touching a person in an unacceptable place is usually considered offensive enough to be labeled sexual harassment.

d. The key word in defining sexual harassment is unwelcome. When any unwelcome or unsolicited conduct is imposed on a person who regards it as offensive or undesirable, could be construed as sexual harassment. When a person communicates that the conduct is unwelcome, it could become illegal.

4. RESPONSIBILITIES

a. **The Medical Center Director** has overall responsibility for the program through managers and supervisors in the exercise of their human resource management activities. In addition, he/she assures that the Department of Veterans Affairs mandatory training is provided in a timely manner.

b. **The EEO/Affirmative Employment Program Manager** is responsible for providing assistance as needed, in this, as in all other areas of EEO Policy and procedures. The EEO/Affirmative Employment Program Manager is also responsible for providing assistance to the Medical Center Director by assuring that all employees are informed of pertinent regulations and procedures relative to the prevention of sexual harassment and by emphasizing this policy in new employee orientation and in-service training sessions.

c. **Management Officials, Service Chiefs and Supervisors** at all levels are responsible for creating and ensuring a work environment free from sexual harassment by affirmatively raising the subject with staff, expressing strong disapproval, continually assessing the potential for inappropriate behaviors in the work place and assuring their ready accessibility and efforts relative to the resolution of matters of this type.

1) Management Officials, Service Chiefs and Supervisors must take immediate and appropriate action upon receipt of actual or constructive knowledge of sexual harassment affecting any of their employees.

2) Management Officials, Service Chiefs and Supervisors who tolerate such behavior by failing to take appropriate action, or who retaliate against employees who report incidents or file formal complaints of sexual harassment will be subject to disciplinary action.

d. **Employees** at all levels are responsible for aiding in the prevention of sexual harassment by actively safeguarding against conduct and behaviors that could be construed as sexual harassment. Employees also have the responsibility of bringing any instance or allegation of sexual harassment to the attention of their supervisor or **appropriate management official**. Any employee engaging in sexually harassing activities will be subject to disciplinary action. All employees are expected and encouraged to take an active role in the elimination of all forms of sexual harassment at the Medical Center.

e. **Management Officials, Service Chiefs, Supervisors and Employees** should become thoroughly knowledgeable of what constitutes sexual harassment and responsive to any form of improper behavior that could lead to such allegations.

5. PROCEDURES

a. All LSCVAMC employees must receive a minimum of two (2) hours training on the Prevention of Sexual Harassment within 60 days of employment and thereafter a minimum of two (2) hours refresher training every two years. In addition, medical center will maintain an active program of training, including new employee's orientation, supervisory training, in-services and other forms of communication as appropriate.

b. What to do if you are the victim of sexual harassment

1) Tell the harasser that the behavior is unwanted, unwelcomed and unsolicited.

2) Keep a record of any instances of harassment such as dates, places, times, comments, your responses, and witnesses. Also keep a record of any follow-up actions.

3) Ask co-workers if they observed the behavior or are aware of similar behavior to keep a record of any instances they observe.

4) Tell your manager, supervisor, or someone else about the incident. If the harasser is your supervisor, inform a higher level management official.

5) Contact the EEO/Affirmative Employment Program Manager, Union representative, Human Resource Management Office, or the Office of Resolution Management within 45 days of the incident.

c. Handling Allegations of Sexual Harassment

1) As soon as an allegation of sexual harassment has been brought to the attention of a management official, he/she will immediately notify the EEO/Affirmative Employment Program Manager, who will report the allegation to the Director, LSCVAMC within 24 hours. If necessary the employees involved will be physically separated immediately.

2) The following procedures will take place:

a) A management official within the same service as the individual alleging sexual harassment should take the complaint. They should

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express no opinion and make no commitment. But encourage the person to speak candidly.

b) The management official will conduct an administrative inquiry on the alleged allegation. The individual will utilize Attachment "A", "Sexual Harassment Allegation Checklist" throughout the process. The management official will interview the alleged victim. If the complainant appears uncomfortable relating the problem to someone of the opposite gender, it is appropriate to have an individual of the same gender discuss the matter with the employee. If the complainant is a bargaining unit employee, it is necessary to apprise the individual that he/she may request to have a union representative present at any meeting or discussion. Tape recorders will not be used during the interviews or fact-finding process.

c) In the process of the interview, the official will record items pertinent to the incident, including dates, times, witnesses and other information. The information will be helpful to an Administrative Board of Investigation, if it becomes necessary to appoint one.

d) The alleged victim will be given the information to utilize the EEO complaint process and be informed that counseling is available through the Employee Assistance Program (EAP) to enable him/her to deal with any emotional trauma.

e) The alleged harasser will be contacted and interviewed by a management official within the same service as the individual accused of sexual harassment. The definition of sexual harassment will be discussed, as well as the statement provided by the complainant. The alleged harasser will be offered the opportunity to provide comments concerning the allegation and be informed that higher levels of management will evaluate the information presented in order to determine if further reviews is necessary. The alleged harasser will be ordered to cease any further contact with the alleged victim except that of which is absolutely required by official business. If the complainant is a bargaining unit employee, it is necessary to apprise the individual that he/she may request to have a union representative present at any meeting or discussion. Tape recorders will not be used during the interviews or fact-finding process. The management official will utilize Attachment "B", "Sexual Harassment Allegation Checklist" throughout the process.

(f) Prompt action is required for all allegations of sexual harassment. Within 96 hours of being notified, the designated management official will submit a written report of the sexual harassment allegation to the EEO/Affirmative Employment Program Manager. To the extent possible, the identities of the complainant, alleged harasser and witnesses will be limited to those directly involved with the investigative procedure. This report will include a description of the complainant and alleged harasser, along with the steps taken to neutralize the situation. The EEO/Affirmative Employment Program Manager

will review the written report with the Risk Manager, Associate Medical Center Director and a decision will be made as to whether any additional action should be completed. If at any time an element of criminal intent is discovered, then that information will be referred to Police Service for appropriate action.

3) Administrative Investigation Board (AIB): When deemed necessary, the Director will assemble an Administrative Investigation Board (AIB) to conduct a detailed evaluation of the allegations. The team will be comprised of at least two individuals and MUST include a member of each sex. If the alleged victim is female it is recommended that the female member of the team conduct the interviews of any females involved or if the AIB would prefer to talk with the female member of the team privately, the other member of the team will leave the room. After the AIB has been completed, if the board makes an administrative remedy recommendation; then that information will be referred to Human Management Resource Service for appropriate action. If information received during the Administrative Board of Investigation reveals an element of criminal intent then that information will be referred to Police Service for appropriate action.

4) Resolution: If the issue is resolved at the local level, it is recommended that both parties sign an agreement. The agreement shall be dated and witnessed by a management official, with copies given to both parties.

6. **REFERENCES.** Veterans Health Administration Directive 2008-018 The Prevention of Sexual Harassment.

7. **RESCISSION.** All previous versions of Medical Center Policy 003-003 are rescinded. The next review date of this policy is March 1, 2019.

8. **FOLLOW-UP RESPONSIBILITY.** EEO/Affirmative Employment Program Manager.

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SUSAN M. FUEHRER
Medical Center Director

Attachments